K.S.R. 1915.

1941

File No. O. Patents & Designs /41

Legal

DEPARTMENT

A **BRANCH**

Subject:—

PNE Opinion under the Patents and Designs Act, 1911

File No. O. Patents & Designs /41

Std. Sectt. Slip 24 B e.

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C O N T E N T S.

Legal Department File No.C.Patents & Designs/1941.

C.No.	Compilation No.	Subject	Pages.
1.	C.No.1265 dt.10-2-41.	Indian Patents and Designs Act, 1911 - Whether there is infringement of the patent if the drug is made and used exclusively for bona fide experimental purposes	1 - 2.
2.	C. No.3360. dt.30-4-41.	Sec 3(3) Whether the view expressed by the Patent Office that - Since Mr. K. was not the "true and first inventor" of the invention, he is not entitled to patent is correct...	3 - 4.

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Office of the R.I.A.

As held in Frearson vs. Loe (1878), 9 Ch.D.48, when articles which are the subject of a patent are made without a licence from the patentee simply for the purpose of bona fide experiments, those who so make them are not necessarily liable to an action, but when they are made and used for profit, or with the object of obtaining profit even to a limited extent, such making and using constitute an infringement of the patentee's rights and will be restrained by injunction. Under section 12(1) of the Indian Patents and Designs Act, 1911 the patentee is entitled to the exclusive privilege of using the invention throughout British India. The word 'using' has been given a very wide meaning. The scope of the acts which constitute an infringement within the meaning of the term in Patent Law is large. It will appear from the view taken in United Telephone Co. vs. Sharples (1885), 29 Ch.D.164 that in order that the use may constitute an infringing act, it need not be a use for pecuniary advantage. (Please see pp.559-561 of Ormond's Law of Patents in India, 1936 edition). The mere fact that the drug in question is not sold by the Haffkine Institute will not by itself be sufficient to hold that there is no infringement at all of the patent. In order that the use of the patented article may be free from being held to ingringe, it would seem that the user must be restricted for experimental purposes only (see paragraph 3 at p.570 of Ormond's Law of Patents in India and Scott vs. Hull Steam Fishing and Ice Co., Ltd.(1896), 14 R.P.C. 143; 36 Digest 757,2410; see also Halsbury's Laws of England Vol.XXIV p. 617. If the drug is made and used exclusively for bona fide experimental purposes, as stated by the Director,

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there would not be any infringement of the patent.

Sd. P.N.M.

Remembrancer of Legal Affairs.

U.R. to the G.D.No.1265 dated the 10th February 1941.

M.V.V.
20/4.

Office of the R.I.A.

From the facts as disclosed in the letter from the Director, Haffkine Institute at pages 1-3 ante it appears that the view expressed by the Patent Office in paragraph 2 at page 59 ante is correct and since Mr.Kerr was not the "true and first inventor" of the invention (see section 5(3) of the Indian Patents and Designs Act, 1911) he is not entitled to patent No.24781. In view of the attitude adopted by Mr.Kerr as indicated in the concluding paragraph at p.8 ante, the only course now suitable in this case appears to be to file a petition for revocation of the patent under section 26 of the Act. Since the proceedings, if any, will have to be in the High Court, perhaps these papers may be shown to the Government Solicitors Messrs. Little & Co. for their remarks before any decision is taken.

Sd. P.N.M
29/4.

Remembrancer of Legal Affairs.

U.R. to the C.D. No.3860 dated the 30th April 1941.